

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GENE ALLEN,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:07-cv-00098-LRH-RAM

ORDER

This action is a *pro se* petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. §2254. The action was dismissed by order filed December 6, 2007. (Docket #39). Prior to the dismissal, petitioner filed a motion for reconsideration (Docket #38) of this Court's order of August 3, 2007 (Docket #27). The order of August 3, 2007, denied petitioner's premature application for a certificate of appealability. (Docket #27).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been

1 discovered in time to move for a new trial under Rule 59(b); (3) fraud
2 (whether heretofore denominated intrinsic or extrinsic),
3 misrepresentation, or other misconduct of an adverse party; (4) the
4 judgment is void; (5) the judgment has been satisfied, released, or
5 discharged, or a prior judgment upon which it is based has been
reversed or otherwise vacated, or it is no longer equitable that the
judgment should have prospective application; or (6) any other reason
justifying relief from the operation of the judgment.

6 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
7 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
8 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
9 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal.
10 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of
11 the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be
12 filed no later than 10 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P.
13 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is
14 presented with newly discovered evidence, committed clear error, or if there is an intervening change
15 in the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v.*
16 *Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999).

17 In the instant case, petitioner has failed to present any reason for reconsideration of this
18 Court's order of August 3, 2007. The motion will be denied.

19 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration (Docket #38)
20 is **DENIED**.

21 DATED this 11th day of June, 2008.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE